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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

March 7, 2017

The Honorable John Kelly
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

Dear Mr. Secretary:

I am writing regarding the designation of election infrastructure as a critical infrastructure subsector.

As you know, on January 6, 2017, the Obama Administration announced that election infrastructure would become a critical infrastructure subsector within the Government Facilities Sector.¹ Former Homeland Security Secretary Jeh Johnson described “election infrastructure” as “storage facilities, polling places, and centralized vote tabulations locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of state and local governments.”² The designation allows states, localities, tribal, and territorial (SLTT) governments that volunteer to receive prioritized cybersecurity assistance from the Department of Homeland Security (DHS).³

The Obama Administration designated election infrastructure as critical infrastructure due to Russian interference in the 2016 presidential election. On October 7, 2016, DHS and the Office of the Director of National Intelligence (ODNI) issued a joint statement explaining, “Some states have also recently seen scanning and probing of their election-related systems, which in most cases originated from servers operated by a Russian company.”⁴ The ODNI report released in January documenting Russian intervention in the election stated, “Russian intelligence accessed elements of multiple state or local electoral boards.” The report concluded

¹ U.S. Department of Homeland Security, *Fact Sheet: Designation of Election Infrastructure as Critical Infrastructure* (Jan. 6, 2017).

² U.S. Department of Homeland Security, *Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector* (Jan. 6, 2017).

³ *Id.*

⁴ Joint Department of Homeland Security and Office of the Director of National Intelligence statement, *Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security* (Oct. 7, 2016).

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that Moscow will build upon the tactics it used in 2016 to influence future U.S. elections,⁵ thus necessitating a vigilant response to ensure that U.S. election systems are secure and prepared for challenges that might arise in elections moving forward.

Several state Secretaries of State have raised questions regarding how DHS plans to implement this designation and what it means for their states' independent authority to oversee elections. For example, the Vermont Secretary of State noted, "We continue to work with DHS on a regular basis as part of our overall cybersecurity approach. It has not yet been made fully clear to us what the critical designation means and ... have posed a number of clarifying questions."⁶

You publicly expressed support for maintaining the Department's designation of election infrastructure as critical infrastructure in order to ensure that voting machines, voter registration systems and other assets essential to holding free and fair elections are eligible for prioritized cybersecurity assistance from DHS. In response to questioning from Rep. Cedric Richmond (D-LA) before the House Committee on Homeland Security you said, "I believe we should help all of the states – provide them as much help as we can – to make sure that their systems are protected in future elections, so I would argue that yes we should keep that in place."⁷

In order to better understand the designation and your plans for implementation, please provide written responses and/or documents addressing the following inquiries by March 17, 2017:

1. Before the election on November 8, 2016, how many SLTT governments requested assistance?
2. Have any new SLTT governments requested DHS assistance after the January designation?
3. Why does the designation include both physical and virtual assets if the 2016 election interference solely involved cyber-attacks and DHS is only offering cyber-related assistance?
4. The DHS Fact Sheet on the designation explains, "Protecting and defending this infrastructure is the responsibility of state and local governments and election officials."⁸

⁵ *Id.*

⁶ Vermont Secretary of State, *Secretary of State Jim Condos Statement on DHS Designating Elections Systems as "Critical Infrastructure"* (Jan. 17, 2017) (online at <https://vermont.gov/portal/government/article.php?news=6228>).

⁷ House Committee on Homeland Security, *Hearing on Ending the Crisis: America's Borders and the Path to Security*, 115th Cong. (Feb. 7, 2017).

⁸ U.S. Department of Homeland Security, *Fact Sheet: Designation of Election Infrastructure as Critical Infrastructure* (Jan. 2017).

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Are states and localities or is the federal government responsible for expenses associated with the assistance and support provided by DHS?

5. If DHS identifies vulnerabilities within an SLTT government's system that require attention, is the SLTT government responsible for the costs of implementing the solution?
6. If fixes are identified to improve an SLTT government's system, but that government chooses not to make the recommended adjustments to address the problem, is the state or locality liable under law?
7. Will the designation of election infrastructure as a critical infrastructure subsector continue under the Trump Administration?
8. What assistance and tools can DHS provide to SLTT governments that participate in the program?
9. Do you anticipate that DHS will require any additional personnel, resources, or authorities to fulfill its responsibilities associated with the designation?
10. How did DHS make the following determination mentioned in the ODNI report, "DHS assesses that the types of systems we observed Russian actors targeting or compromising are not involved in vote tallying?"
11. Please provide copies of any guidance or any other information provided by DHS to SLTT governments responding to the Department's designation.

If you or members of your staff have any questions about this request, please ask your staff to contact Julie Klein with the Committee staff at 202-224-2627. Please send any official correspondence relating to this request to Amanda Trosen at Amanda_Trosen@hsgac.senate.gov. Thank you for your attention to this matter.

Sincerely,



Claire McCaskill
Ranking Member

cc: Ron Johnson
Chairman